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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,337	01/22/2004	Jean-Louis Gueret	118323	2685
25944	7590	11/07/2005	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,337

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 13-17, 19-22, 24, 26, 28-31, 33 and 40-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-47 is/are allowed.
- 6) ☐ Claim(s) 1-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 is/are rejected.
- 7) ☐ Claim(s) 43 and 44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/22/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election

Applicant's election with traverse of Species I, Subspecies A in the reply filed on 9/9/05 is acknowledged. The traversal is on the ground that there is no burden on the Examiner to examine all of the species and subspecies. This is not found persuasive because the examination of 48 claims directed to 22 species and two subspecies, as opposed to a lesser amount of claims directed to a single species and subspecies, is clearly burdensome. Accordingly, claims 1-6, 12, 18, 23, 25, 27, 32, 34-39 and 43-45 will be examined herein while the remaining claims are hereby withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The drawings are objected to because reference character 8 is used to denote two different elements (see Figures 1 and 1-17, 23). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: Reference character 8 is used to denote two different elements (see paragraphs 0056 and 0057, 0081, 0088, 0090, 0098). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Mann. In regard to claim 1, Mann discloses an applicator element comprised of two walls 28 forming a cavity therebetween for retaining a substance, a slot 32 extending along a longitudinal axis through which the

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substance is dispensed and an opening (not numbered) whereby the cavity opens to the "outside" and wherein the opening has a width in the plane extending transversely to the slot that is greater than a width of the slot in the same plane. It is noted that statements of intended use, i.e., configured to apply a substance on a portion of the human body" do not lend any patentable structure to the claims. Further, the Mann device is capable of applying a substance to the human body should a user so choose to employ the device. In regard to claim 2, the slot is between the walls. In regard to claim 3, the walls are elongated with an axis that is parallel to the axis of the slot. In regard to claim 4, the slot is entirely separate from the opening. In regard to claim 5, the slot is situated opposite from the opening. In regard to claim 6, the applicator element has substantially V shape. In regard to claim 12, the slot extends in a rectilinear direction. In regard to claim 18, the edges of the slot are linear. In regard to claim 23, the slot 34 is uninterrupted along its entire length. In regard to claim 25, the opening is uninterrupted. In regard to claim 27, the device includes a stem 16 wherein the slot extends parallel to the longitudinal direction of the stem. In regard to claims 32 and 34, the walls are made from an elastically deformable elastomer (as evidenced by the shown cross-hatching and column 3, lines 2-8). In regard to claim 35, the applicator includes a "handle member" 16. In regard to claim 36, the device includes a receptacle 19 for containing the substance. In regard to claim 37, the wax dispensed by the Mann device is considered to be a "cosmetic" in that the wax is used to improve the appearance of the floor. In regard to claim 38, the applicator is considered to be releasably connected to the receptacle. In regard to claim 39, the applicator seals off

the receptacle (via plate 25) in a leaktight manner (see column 2, lines 51-53). In regard to claim 48, the wax dispensed by the Mann device is considered to be a "care product" in the wax is used to treat, and thereby "care" for the floor.

Allowable Subject Matter

Claims 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 45-47 are allowed.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Nalbone et al., Wolff and Rupp references are cited for disclosing other applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
11/3/05